IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 150-DBA of 1997
DATE OF DECISION: 8.3.2007
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The State of Punjab **..APPELLANT**

VS.

Gurbhagat and another.

..RESPONDENT S

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. S.S. Randhawa, Sr. DAG Punjab**
for the appellant.

Mr. H.S. Kamboj, Advocate and
Mr. Nakul Sharma, Advocate
for the respondents.
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ARVIND KUMAR, J.

Impugned in this appeal, preferred by the State of Punjab, is the judgment dated 24.12.1994 passed by learned Sessions Judge, Faridkot, whereby the respondents herein have been acquitted of the charge under Section 302 IPC, framed against them, for having committed the murder of Pavittar Singh.

According to the prosecution allegations, on 4.3.1992 both the respondents along with Ajmer Singh, Pohla @ Bhola @ Amarjit and Balbir Singh, all of three have since died, while coming to the house of Bhag Singh (PW.2), opened fire upon Pavittar Singh son of Bhag Singh, as a result of which Pavittar Singh died at the spot, due to shot injuries. It was the say of the prosecution that the occurrence took place as both civil and criminal proceedings were pending between complainant and respondents Gurbhagat and Jagsir Singh and it happened in the presence of PW.2 Bhag Singh and PW.3 Gurdev Kaur, father and mother respectively of the deceased. On the basis of statement (Ex.PD) made by PW.2 Bhag Singh son

of Sunder Singh, father of the decased, present case was registered and investigated upon by PW.4 ASI Harpal Singh, which included preparation of inquest report (Ex.PC), lifting of blood stained and simple earth from the spot, recovery of five empties from the spot, preparation of rough site plan. Autopsy on the dead body of Pavittar Singh was conducted by PW.1 Dr. Rajesh Kumar and scaled site plan of the occurrence was prepared by PW.5 Gursewak Singh, Draftsman.

It is apposite to mention here that initially the complainant Bhag Singh in his statement Ex.PD only named the present respondents as the assailants who had committed the murder of his son Pavittar Singh. However, in his supplementary statement (Ex.DA) recorded on 17.4.1992, he also named Ajmer Singh, Pohla @ Amarjit and Balbir Singh, instrumental in murder of his son, along with the present respondents. Thereafter, both the respondents were arrested on 26.4.1992. Since Ajmer Singh, Pohla @ Bhola @ Amarjit and Balbir Singh were died, therefore, challan was filed against both the accused-respondents only.

After commitment, the learned trial court framed charge under Section 302 IPC against both the respondents.

During trial, the prosecution produced five witnesses in all viz. PW.1 Dr. Rajesh Kumar, PW.2 Bhag Singh, PW.3 Gurdev Kaur, PW.4 Harpal Singh ASI and PW.5 Gursewak Singh Draftsman. Besides, affidavit Ex.PK and report of Forensic Science Laboratory Ex.PL and Ex.PM were tendered in evidence by the prosecution.

The accused-respondents, in their statements under Section 313 Cr.P.C. pleaded innocence and false implication in the instant case on account of litigation. Their stand was that, they were arrested on 6.3.1992 and were detained illegally and lateron their arrest was shown.

No evidence in defence was produced by the respondents.

On conclusion of the trial and after appreciating the evidence led by the prosecution, the learned trial court acquitted both the respondents, as said above. Dissatisfied with the findings of acquittal recorded by the learned trial court qua both the respondents, the State has preferred the instant appeal.

We have heard learned State counsel as well as learned counsel for the respondents and have gone through the judgment of the trial court

and find ourselves in total agreement with the findings recorded therein

The present case rests mainly on the statement of PW.2 Bhag Singh and PW.3 Gurdev Kaur. Admittdly, both the eye-witnesses, being the parents of the deceased Pavittar Singh are the relation witnesses. There is no doubt that merely on account of the relationship their evidence cannot be discredited, but rather requires strict in its scrutiny so as to acceptability of such an evidence. The stumbling block in the case of prosecution is the supplementary statement (Ex.DA) of Bhag Singh stated to have been correctly recorded, as is evident from the statement of PW.4 ASI Harpal Singh to the effect that Ajmer Singh, Pohla and Balbir were also present outside the door of their house, at the time of occurrence, but he did not name them due to fear so that they may not have done more damage to him. The words "they may not cause further damage to him" assumes great importance which led the trial court rightly to infer that if Ajmer Singh etc. were present outside the door of the house of the complainant when deceased Pavittar Singh opened the door, the possibility cannot be ruled out that it were they (Ajmer Singh, Pohla and Balbir) who had fired upon Pavittar Singh. Otherwise, in case had the present respondents been the assailants, they would not have spared Sadhu Singh, the brother of deceased Pavittar Singh, with whom they were also having litigation. PW.2 Bhag Singh had categorically stated in his supplementary statement that those three persons had come with arms. Those three persons have not been exonerated by the police during investigation, but not challaned by the police obviously for the reason that they were stated to have already died. Deceased Pavittar Singh was previously working with Home Guard Department. PW.3 Gurdev Kaur had admitted in her cross-examination that after the death of Pavittar Singh, an publication was affixed in the village that Pavittar Singh was informer of the police regarding militants, so had been killed. This also led the trial court to infer that the murder of Pavittar Singh was the handy work of those three persons, who were involved in terrorist activities and had already died. The learned trial court has rightly observed in this context that since Bhag Singh had not noticed any empties in the court-yard, it looks more appropriate that shot had been fired by Ajmer Singh etc., who had been found present outside the door of the house. There is delay of about 13 hours in lodging the first information report,

though the house of the complainant/ deceased was situated in village abadi and after the departure of the assailants, help of Panch, Sarpanch, Lumberdar could be sought in approaching the police immediately or at least the complainant would have called those persons from nearby houses to tell that the murder has been caused by the accused-respondents i.e. Gurbhagat and Jagsir Singh. But in action on his part shows that in fact the murder had been committed by Ajmer Singh etc. and he did not want to name them out of fear, avoiding further harm to them. In this situation, the possibility cannot be ruled out that the present respondents have been named falsely. Admittedly, a criminal and civil litigation was pending between the complainant party and the respondents. It cannot be overlooked that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. No fire-arm have been recovered from the respondents-accused, obviously to cover up the case as in the eventuality of any recovery of fire-arm, the same would not have matched with those empties which the investigating officer claims to have recovered from the court-yard, though PW.2 Bhag Singh, as discussed above, does not mention recovery of any empties from the court-yard.

In view of the discussion made above, the impugned judgment is neither perverse nor there is any error of law. No interference is called for. The appeal is accordingly dismissed.

(ARVIND KUMAR)
JUDGE

March 8,2007 **(MEHTAB S. GILL)**
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